STATE OF MICHIGAN

COURT OF APPEALS

MJC CHESTERFIELD, L.L.C., Petitioner-Appellee,	UNPUBLISHED May 17, 2011
v	No. 296975 Michigan Tax Tribunal
TOWNSHIP OF CHESTERFIELD, Respondent-Appellant.	LC No. 00-327410

Before: DONOFRIO, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

This appeal arises from petitioner MJC Chesterfield, L.L.C.'s challenge to respondent Chesterfield Township's ad valorem tax assessments of petitioner's parcels of real property. Respondent appeals as of right the tax tribunal's ruling that reduced the taxable values of several parcels of petitioner's real property. In adjusting the taxable values at issue, the tax tribunal failed to base its decision on competent, material, and substantial evidence; thus, it committed an error of law occurred requiring reversal. Further, the tax tribunal's opinion and judgment never fully explained how it determined the taxable values at issue and therefore the tax tribunal's opinion and judgment failed to facilitate appellate review. For these reasons, we reverse and remand for further proceedings.

Petitioner is a builder and developer of condominiums. In August 1999, petitioner purchased three parcels of real property consisting of approximately 79 acres in Chesterfield Township. Petitioner paid $1,239,426.50 for parcel one, $650,000 for parcel two, and $1,280,465.50 for parcel three (the sum is $3,169,892). The record suggests that petitioner divided those three parcels into smaller parcels, where, as of June 27, 2006, petitioner owned 65 contiguous parcels. On June 27, 2006, petitioner challenged respondent's assessment of petitioner's parcels for the 2006 assessment year. Petitioner essentially asserted that the assessments exceeded 50 percent of the parcels' true cash value. Petitioner requested the tax tribunal to determine that the assessed and taxable values for its parcels were in accord with petitioner's estimations. Petitioner provided that the disputed taxable value between taxable value assessed by respondent and the taxable value proposed by petitioner amounted to $193,557. Petitioner later moved to amend its petition to include tax years 2005, 2007, 2008, and 2009.

The tax tribunal granted petitioner's motions to amend its petition regarding tax years 2007 and 2008. The tax tribunal denied petitioner's motion to add tax year 2005 to the instant case. The tax tribunal granted petitioner's motion regarding tax year 2009, but it severed that tax year from the instant case, and assigned it a separate tax tribunal docket number. The tax tribunal indicated that its opinion in the instant case was pending; thus, severance was warranted. As noted previously, 65 parcels of petitioner's real property were at issue for tax year 2006. For tax years 2007 and 2008, however, only 36 and 18 parcels of petitioner's real property, respectively, were at issue. On February 26, 2008, petitioner filed a valuation disclosure for tax years 2006 and 2007, wherein it limited the appeal before the tax tribunal to "the property's taxable value only." Petitioner asserted "that the taxable value for each of the parcels that are subject to this appeal should be reduced by the amount of public service improvements added by Respondent to the taxable value of each parcel."

On August 24, 2009, the tax tribunal conducted a hearing on this matter. Beth Ann Brennan, the controller for MJC Homes, Inc., provided some historic background regarding petitioner's acquisition of the property at issue. Brennan also prepared a summary of the assessments and taxable values for 2006, 2007, 2008, including information regarding petitioner's building costs. Petitioner's counsel essentially sought to admit Brennan's summary as an updated valuation disclosure. The tax tribunal excluded the summary because petitioner failed to exchange it in advance and failed to file a motion requesting a new valuation disclosure.

Macomb Equalization took over assessing duties for respondent on July 1, 2008. According to Steven Mellon, a level four assessor with Macomb Equalization, he did not know how the 2006 or 2007 assessments were determined. During Mellon's examination, the following exhibits were admitted: property record cards for 2006; a spreadsheet depicting respondent's assessed and taxable values for 2006, 2007, and 2008, and petitioner's contentions regarding the disputed taxable values; and printouts of online property record cards for 2007 and 2008. In pertinent part, property record cards for 2006 provided, for 61 out of petitioner's 65 parcels, that the land value for a given parcel was $3,411 in 2005 and $9,000 in 2006. The property card records for the other four parcels provided that two parcels had land values of $9,000 for 2005 and 2006, and the other two parcels had land values of $10,500 for those years. The printouts of online record cards provided values for the Board of Review's assessment, the final state equalized value, and the final taxable value for 2007 and 2008 for 27 of petitioner's parcels. Petitioner's spreadsheet presented the true cash value; assessor assessment; taxable value; 50 percent of vertical costs as of December 31, 2005; petitioner's purported taxable value of land value; petitioner's purported taxable value; petitioner's vertical costs; and the difference between the taxable value and petitioner's purported taxable value.[1] The spreadsheet also shows closing dates for various parcels that had been sold.

[1] These values are provided for 64 parcels for 2006, 27 parcels for 2007 (the 2007 spreadsheet excludes from the list nine parcels that were sold), and 18 parcels for 2008. It is unknown why petitioner omitted one parcel for the 2006 tax year from its spreadsheet.

In its opinion and judgment, the tax tribunal set forth the state equalized value and taxable value on the assessment role, petitioner's taxable values, and the tax tribunal's final taxable values for the relevant years. The tax tribunal found that the land value of 61 of petitioner's 65 parcels increased $5,452 for each parcel from 2005 to 2006. The tax tribunal acknowledged petitioner's representation that the consumer price index (CPI) for 2006 was 3.3 percent; thus, the taxable value for land should have only increased to $1,352 for the 61 parcels for 2006, where the taxable value for the land for said parcels was $1,309 in 2005. The tax tribunal ruled that respondent increased the taxable values above the inflation rate for 2006, and it set the parcels' assessed and taxable values for the challenged tax years in its opinion and judgment.

Respondent moved for reconsideration, asserting that petitioner failed to demonstrate its parcels' true cash value, and failed to prove that respondent increased taxable values for infrastructure; that the tax tribunal erred in finding that petitioner carried its burden regarding the foregoing, and improperly shifted the burden of proof to respondent; and the tax tribunal's ultimate final taxable values were erroneous. The tax tribunal acknowledged that it erred in finding that petitioner met its burden of proof regarding the taxable values. The tax tribunal ultimately concluded, however, that respondent failed to demonstrate palpable error that misled the tax tribunal and would have led to a different result had the error been corrected. Respondent now appeals as of right.

Respondent argues that petitioner failed to carry its burden of proof regarding its appeal before the tax tribunal. Absent fraud, we review a tax tribunal's decision to determine whether it erred in applying the law or adopting a wrong legal principle. *Ford Motor Co v Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006). "All factual findings are final if supported by competent, material, and substantial evidence." *Wayne Co v State Tax Comm*, 261 Mich App 174, 194; 682 NW2d 100 (2004).

Here, petitioner limited its appeal before the tax tribunal to a determination of taxable value only, arguing that the taxable values for its parcels should be reduced by the amount of alleged public service improvements added by respondent to said taxable values. Under Const 1963, art 9, § 3, the legislative scheme for determining taxable values applies. The taxable value of each parcel of property is the lesser of the following: "[t]he property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions," or "[t]he property's current state equalized valuation." MCL 211.27a(2).

The tax tribunal was obligated to provide a concise statement of facts and conclusions of law. MCL 205.751(1). One of the purposes of the tax tribunal's opinion is to facilitate appellate review. *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 402; 576 NW2d 667 (1998). The tax tribunal determined that the taxable value of the land portion of petitioner's parcels increased more than the Consumer Price Index (CPI), or one of the indexes measuring the inflationary rate, and it in effect reduced the taxable values for 60 of petitioner's parcels by $4,100 for 2006. The tax tribunal reduced, without explanation, the taxable value for one parcel, and left undisturbed the taxable values for four other parcels. The tax tribunal also reduced the tax values for 26 out of 27 parcels in 2007, and for 14 out of 17 parcels in 2008. The tax tribunal increased the taxable values for the other parcels in those periods. But the tax tribunal's opinion lacked the necessary explanation regarding how it reached its final

determination of the taxable values at issue. We can only speculate regarding how the tax tribunal reached its ultimate determination of the taxable values at issue. The tax tribunal focused solely on the increase to the land value portion of petitioner's parcels, because petitioner presented no evidence regarding its improvements (characterized as building value in the 2006 property record cards) to the parcels from 2005 to 2006. The tax tribunal apparently computed the parcels' taxable values by following the formula set forth in MCL 211.27a(2). With respect to MCL 211.27a(2)(a), the taxable value for 60 of the parcels for 2005 amounted to $1,309, all of which was based on land value. The tax tribunal appears to have accepted petitioner's representation that the CPI was 3.3 percent for 2006,[2] which was less than 1.05. See MCL 211.27a(2)(a). The tax tribunal next determined that the taxable value for the land for 60 parcels at issue in 2006 could only increase to $1,352 based on that CPI. As such, the tax tribunal implicitly concluded that the taxable values should be the building value plus the foregoing taxable value for land. The tax tribunal appeared to calculate the difference between the taxable values set by respondent and the undisputed building values, which amounted to $5,452 for each of the 60 parcels. The tax tribunal seemed to conclude that this amount was the amount respondent assessed as the taxable value for the land. The tax tribunal deducted the previous year's taxable value adjusted for inflation $1,352 from $5,452, an amount of $4,100, to determine the final 2006 taxable values for 60 of petitioner's parcels.[3] The tax tribunal reduced the taxable value for one parcel by $5,090 without any explanation.

With respect to the challenged taxable values for 2007 and 2008, the tax tribunal calculated the taxable values for 27 and 17 parcels, respectively, but it did not explain how it determined those taxable values. The tax tribunal appears to have multiplied the inflationary rate based on petitioner's representation of the 2007 and 2008 CPI's to the new 2006 and 2007 taxable values in order to ascertain the new 2007 and 2008 taxable values.

Based on the foregoing, the tax tribunal seemingly had a basis to determine taxable values for most parcels by following the formula set forth in MCL 211.27a(2)(a). However, we cannot substantiate the CPI's used by the tax tribunal in performing any of its calculations. In its opinion and judgment, the tax tribunal did not specify what inflationary rate it relied on in making its calculations other than what was represented by petitioner below.

Const 1963, art 9, § 3 provides in pertinent part "the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the *general price level* . . . or 5 percent, whichever is less . . . ." (emphasis added). Const 1963, Art 9, § 33 defines "general price level" as the CPI for "the United States as defined and officially reported by the United States Department of Labor or its successor agency." Our state's department of treasury included the annual averages from the

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[2] On appeal, respondent objects to the fact that the tax tribunal supplied the relevant CPI; however, the tax tribunal could take judicial notice of the relevant CPI. See MRE 201(b).

[3] The calculation derived from MCL 211.27a(2)(a) results in a lesser sum than the state equalized value, MCL 211.27a(2)(b), as set by the board of review in 2006. See MCL 211.34.

foregoing CPI in its Consumer Price Indices and Inflation Rates for the relevant years. The CPI was 3.2 percent for 2006, 2.8 percent for 2007, and 3.8 percent for 2008. Conversely, petitioner's counsel asserted below that the CPI was 3.3 percent for 2006, 3.7 percent for 2007, and 2.3 percent for 2008; however, there was no evidentiary support for those assertions, and our treasury department's CPI's for the relevant years refute such assertions. Notably, there is no record support for the CPI used by the tax tribunal and it did not provide any basis for the $5,090 taxable-value reduction for one of the parcels.

For all of these reasons, we cannot conclude that the tax tribunal's findings are supported by competent, material, and substantial evidence. *Wayne Co*, 261 Mich App at 186. Because the tax tribunal failed to base its decision on competent, material, and substantial evidence, it committed an error of law requiring reversal. *Oldenburg v Dryden Twp*, 198 Mich App 696, 698; 499 NW2d 416 (1993). The tax tribunal's opinion and judgment also failed to facilitate our review by not explaining its calculation for the relevant taxable values. *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 402. It is for the tax tribunal to articulate its methodology utilizing properly supported rates. It is not for this Court to make the articulation or guess at the methodology used by the tax tribunal. While the determination may be correct, we cannot guess or speculate in making our determination.

On appeal, respondent primarily argues that petitioner failed to carry its burden to demonstrate that the purported public service improvements were included in the taxable value. In an appeal before the tax tribunal, "[t]he burden of proof encompasses two concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 408-409. Generally, the burden of proof in tax tribunal requires meeting the preponderance of the evidence standard. See generally *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 495; 644 NW2d 47 (2002). Below, the tax tribunal found that petitioner satisfied its burden, where "while it may not be crystal clear as to why the taxable value for the majority of the lots increased above the CPI, Respondent had a duty to provide an explanation of why and blatantly refused to do so." The record suggests that petitioner "more likely than not" demonstrated a statutory or constitutional violation given that the land values on the property record cards more than doubled for 61 parcels from 2005 to 2006, and the taxable values related to said land values would correspondingly increase. See *Skinner v Square D Co*, 445 Mich 153, 165; 516 NW2d 475 (1994); *Holloway v Gen Motors Corp*, 399 Mich 617, 636-637; 250 NW2d 736 (1977). As such, it was not inappropriate for the tax tribunal to allocate the burden of proof to respondent to explain the increase in land value. *Kostyu v Dep't of Treasury*, 170 Mich App 123, 130; 427 NW2d 566 (1988). Significantly, respondent refused to explain why the land value for the parcels at issue increased.

Respondent also claims that the tax tribunal erroneously reduced the taxable value of parcels in which petitioner had no interest. Respondent provides only a cursory argument with no supporting authority to advance this claim. Respondent may not merely announce its position and leave it to this Court to discover and rationalize the basis for its claim; nor may it give issues cursory treatment with no citation of supporting authority. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). Respondent's failure to address the merits of this claim constitutes abandonment. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

We reverse and remand this case for the tax tribunal to clarify its methodology and to utilize properly supported inflationary rates, as provided by our state's department of treasury's annual average CPI's. We do not retain jurisdiction. Respondent, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Jane M. Beckering